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FOREWORD

At present taxation according to the ability to pay forms the basis of all taxes, and it is generally admitted that an extensive adoption of progression is highly desirable from the standpoint of taxation based upon the faculty theory. Although there are some who oppose this view, their stand is unable to weaken the accepted theory. The fact remains, however, that because of the very nature of progression, it cannot be applied to all taxes. It cannot be applied with ease to consumption taxes, for instance.

True, it may be said that even in the case of consumption taxes in general higher tax rates can be imposed on articles of luxurious consumption or high class goods, and lower tax rates on articles of an opposite nature. Such a system may be regarded as a sort of progression, but a very imperfect one. In the case of taxes such as the stamp and registration duties (both of which are transaction taxes),

progression is not adopted, and even proportion is adopted but imperfectly, these being fixed or class taxes. Proportion is usually adopted in the case of the tax on products.

Progression is adopted in such taxes as the inheritance tax, the income tax, and the property tax; the first tax, in particular, is representative of taxes in which progression is applied. In it progression is doubly applied. Not only the advalorem progression, which is the usual form of progression and the tax rate fixed according to the amount of property inherited, but also specific progression or progression-according to the degree of relationship between legatee and testator is also applied to the inheritance tax. This practice of progression has been approved both theoretically and practically, so that no detailed discussion over it is necessary. In the case of the inheritance tax, however, there are reasons for the application of various specific progressions; and it is quite possible to explain this phenomenon from the faculty theory. In this article I shall point out this fact and explain its practical application.

1. THE OLD ACCEPTED SPECIFIC PROGRESSION IN THE INHERITANCE TAX

(1) The old specific progression in the inheritance tax.

(A) In general—As has been stated, in the case of the inheritance tax, besides the progression based upon the amount of the property inherited, there is a specific progression based upon the degree of relationship, and this is generally accepted in theory. Nor is this of recent origin. On the contrary, it existed since the remote past. (It may be traced back to the days of Rome). It can be adequately explained from the standpoint of the faculty principle. In the case of the taxation of big property, such a progression may be justified from social policy calculated to check the expansion of big property. The owner of a big property feels less distress than does the owner of a small property from the payment of the inheritance tax; this means that

the former has a greater faculty than the latter to bear the tax burden. For this reason the legatee to a big property should rightly be required to bear a higher tax rate than the legatee to a small property.

And, even where equal amounts of property are in question, different rates should be adopted according to the degree of relationship of the taxpayers. He who is of closer relationship is ipso facto more highly entitled to succeed to the property than he who is of more distant relationship. The former in consequence feels a greater distress and has a less capacity to pay than the latter; and for this reason he should be entitled to a lower rate. Some (Vocke, for instance) oppose the second progression on the ground that the degree of relationship makes no difference to the inherited right. Such a view, however, is too formal and superficial and does not take into consideration the psychological and subjective condition of the taxpayer.

(B) A special case in Japan—In Japan, besides these differences in rates, there exists another difference in rates. This exists between the succession to a house and that to an estate. There are also different rates for the succession of the members of a household and non-members of a household. Although the latter system is inadequate, it is carried out to a certain extent. It would be an effective method enough if such membership were based upon real or economic life, but as a matter of fact it is largely a thing of legal relations; or to put it more concretely, it is a matter of simple registration. It is sometimes difficult to justify the system.

(a) The differentiation between the succession to a house and the succession to an estate is a sort of special progression; the former is subject to a lower rate than the latter. Its existence is due to the peculiar system of inheritance in Japan, and is calculated to protect the family system. However, it may be justified from the standpoint of the faculty principle. In the case of the succession to a house, the legatee feels that he is entitled to a fuller right than in

the case of the succession to an estate and that in consequence he feels the distress caused by the taxation more severely than in the other case. For this reason he may be regarded as possessing an ability to pay less than if he had inherited an estate. This is a special progression in Japan and may be regarded as a variety of a progression according to the degree of relationship.

(b) The system of discrimination between members of a household and non-members in the inheritance tax may be regarded as a variety of a progression based upon the degree of relationship. In many cases, those who are closely related to a testator who leaves his property to some one else, happen to be members of his household; while those who are distantly related often are not members. However, this is not always the case. It sometimes happens that those who are most closely related to a testator are non-members of his household, while those who are distantly related live under his roof.

Again, it sometimes happens that some of those of the same degree of relationship are members, while others are non-members, of a household. In this case, the economic status of family members will suffer deterioration on account of the death of the testator with whom they have been carrying on a common economy. In consequence, they will feel a greater pinch from the taxation and will have a less ability to pay than those non-members whose economic status will be enhanced as the result of the legacy.

Strictly speaking, however, the foregoing explanation has very little force, because, as has already been pointed out, family membership in this country is largely a matter of registration. The system should rather be explained on the ground that family members (on registration) feel that they are more entitled to the succession than non-registered members of the family and that for this reason they should pay a less tax than the latter.

Some western writers (Gruntzel, for instance) oppose the system of progression based upon the degree of relationship

under their own respective circumstances, and would substitute for it a progression based upon whether the legatee was an actual family member of the testator or not. Although the total denial of the progression based upon the degree of relationship is highly absurd, there is no doubt that the taking of the actual relations between a testator and a legatee (that is, whether the latter lived as a real member of the former's household) seems to be a commendable one.

(2) The Meaning of Progression.

The foregoing discussion has made it imperative to define the meaning of progression. Inasmuch as there are cases of progression in the inheritance tax which are based upon things other than the amount of the property inherited, the usual definition to the effect that it is a form of tax rate graduated according to the amount of income or an other tax base is not enough. Rather it should be defined as a tax rate applying to the tax base, differentiated by some standpoint. This is the meaning of "progression" in what I shall discuss in the later pages.

2. SPECIFIC PROGRESSIONS IN THE INHERITANCE TAX THAT SHOULD BE RECOGNISED

(1) The standpoints of new specific progressions in the inheritance tax, and explanations thereof.

(A) Standpoints—I am of the opinion that the old progressions of the inheritance tax are not quite enough. Consideration for the progressions based upon relationship between a testator and a legatee, kinds of succession, family membership, have been made, instead of being contented with the ordinary progression; such consideration is desirable from the standpoint of the faculty theory. However, there are other things which must be taken into consideration. Some of them are more important than the old factors. They are:

1. The nature of the business ability of the legatee.

2. The condition of his income and property outside of the legacy.

3. In case he is a member of the testator's household, the nature and amount of the testator's personal income (earned income) should be considered.

4. In case he is a member of the testator's household, the extent to which he has participated in the latter's business should be taken into consideration.

5. The kinds of property inherited (whether realty or personalty).

6. In the case of the estate duty, in particular, differentiation should be made between the estate created by a testator during his lifetime and that which he had inherited from his predecessors.

The foregoing six factors give rise to difference in the faculty to pay, and they may be made the bases of tax schemes.

(B) Its reasons—

(i) Other things being equal, the difference in the business ability of legatees will give rise to difference in their faculty to pay, under the same circumstances and when the amount of the property which they inherit is the same. The greater the business ability of an legatee, the brighter will be his prospects of deriving revenue from the property, he inherits than the one who has a less ability or no ability at all; and consequently he will feel a less distress because of the imposition of the inheritance tax; and this means that he has a greater ability to bear the tax burden. Supposing an legatee's entire property he inherits is well invested, the greater his business ability, the more certain will be the possibility of deriving a profit therefrom, and the greater will be his ability to pay. A specific progression may be justified from such a standpoint.

On the other hand, it may be argued that, because of such great prospects for yielding profits, the legatee will assess his inherited property at a higher value, and consequently he will feel much distress in paying the tax. One

may say that no future prospects of whatever kind in connection with the investment of an inherited property ought to give rise to a specific progression, as a simple proportion is quite enough. However one cannot say that a legatee will invest all of his inherited property; on the other hand, he may use it directly for consumption purposes. He may also use the proceeds from the property for consumption purposes. Thus, he may use his property for his personal consumption either directly or indirectly.

When he evaluates his property with an eye to this consumption—and let us remember that his investment is not a purpose *in se* but a means to an end—the greater his business faculty, the less keenly will he feel inconvenience from the taxation of his property, and the greater will be his ability to pay.

(ii) An inquiry into a legatee's revenue and the condition of his property must concern itself with the following questions: (1) Has he an independent income from his labour? (2) Has he his own property? (3) What is the size of such income or property if he have one?

Each these questions affects one's valuation and appreciation of one's inherited property. Other things being equal, different answers to the foregoing queries will make the corresponding differences to legatees. The greater the amount of one's property or income, the less will be his distress over the payment of the tax, and the greater will be his faculty to pay. If a person has a large income or property of his own, he will not need to depend on it for his living, and a high rate of tax will not be very burdensome to him. On the other hand, if he has no property or income of his own, his succession to the property of his predecessor will be absolutely necessary for his existence, and he will feel a great distress in having to pay a tax out of this property.

The matter, however, is not so simple, when the complex psychology of taxpayers is taken into consideration. It is more than possible that the owners of a large property will assess the same proceeds at even a higher rate than

will the owners of a smaller property; and in consequence the former may feel greater pain than the latter. But those who accept the theories of progressions for both the income and the property taxes, must admit that one who has a larger income or property feels a less inconvenience from taxation than one who has a smaller income or property.

In a country like Germany where there exists property tax, the amount of a legatee's already owned property may be taken as a base, but in our country there is no such tax and consequently we must depend upon the income tax. This system should be adopted in our country by all means. At present, the size of the property inherited and the degree of relationship only are taken into consideration in assessing the amount of the inheritance tax, but it is obvious that the amount of the legatee's own income or property should also be taken into consideration. The last named should be regarded as just as weighty as the first two. Not only in theory but in actual practice as well, the economic position of a legatee has a close relationship to both the property inherited and the assessment of the tax thereon. It is an important factor in the inheritance tax.

On the one hand, it may be said that the application of the above-mentioned theory would be extremely limited inasmuch as a legatee usually lives under the operation of his predecessor's economy and for this reason he does not usually have an income or a property of his own. On the other hand, it must be admitted that, with the development of culture and the division of labor and with the increasing freedom of transportation, far fewer people live under the economy of their parents, and more and more live under their own economy possessing their own income or property. This tendency will be much more accelerated with the general march of time, and for this reason the importance of the theory I have advanced will be correspondingly increased in the future.

The point I have so far elucidated will also have the effect of checking the evasion of the inheritance tax. Parents

often buy property in the name of their children for the purpose of escaping the future taxation in the form of the inheritance tax. This practice will be discouraged by the consideration of the legatee's own property in assessing the inheritance tax. When legatees are under age, it is possible in some kinds of property to tax the property transferred to them from their parents, but after they have reached the age, it is very difficult to reach the property thus transferred, even when the act of tax evasion is clear. But if the economic condition of legatees is taken into consideration in assessing their inherited property, the practice of tax evasion under consideration will be largely forestalled.

(iii) In case a legatee is a member of the predecessor's household and the latter had been deriving a personal earned income, the former would be in a more deplorable economic condition as a result of the death of the testator than another whose predecessor had not possessed such a revenue; and consequently he will suffer a greater inconvenience from the taxation than others who are otherwise situated. His faculty to pay must be regarded as smaller and a lower rate of tax should be imposed upon him. When a testator has no personal income, especially if he had indulged in wasteful expenditure, his death may leave the heir in a better economic condition.

(iv) In case a legatee is a member of the testator's family and the former had participated in the latter's business enterprise, the legatee will feel that he is more entitled to the property than those otherwise situated. He will think that he has contributed towards the increasing the amount of the property he is about to inherit, and will assert a right to its succession. In consequence, he will feel a greater loss from the taxation thereon than others. This means that he has a less faculty to pay, and therefore a different rate should be adopted.

In an extreme case in which the heir is industrious and the testator, wasteful, it may be asserted that, although he

inherits the property in form, actually he gets back his own property from the testator.

(v) Of different kinds of property inherited, a higher rate of tax is imposed upon movables than on immovables, because the possessor of the former is supposed to have a greater faculty to pay than the latter, due to the fact that movables possess easier convertibility into money than immovables, thereby enabling their possessor to derive greater proceeds therefrom. Of various movables, cash and deposits can be used in tax payments, while the possessor's negotiable securities can easily find a buyer at present. On the other hand, it is extremely difficult to find a buyer at once, in the case of immovables which must either be sold at very low prices if the proceeds therefrom are to be used for the payment of taxes immediately due or else they must be mortgaged for loans.

Thus, it is easy to get proceeds from movables but usually difficult to do so in the case of immovables. Strictly speaking, however, this is not true. Of movables, such things as curios and furniture are not easily converted into cash. However, they are not important items of movables in general. In taxation, no minute classification is possible, so that a differentiation based upon rough estimates is inevitable. We may say, then, it is just that a little higher rate for movables over immovables should be adopted. I regret that this is too often altogether neglected. However, in some countries the point in question is taken into consideration in dealing with the delay, abatement, and low assessment of taxes on immovables, especially those of agricultural enterprises, although no differentiation is made between movables and immovables directly. There is no such system in this country, so that, generally speaking, immovables are more disadvantageously placed than movables.

The difficulty of convertibility, however, is not the only reason for a heavier rate for movables over immovables in the inheritance tax. There are some other reasons which more or less challenge one's attention. The first reason is

found in the fact that it is comparatively easy to evade the taxes on movables, and this means that the actual tax burden is so much lighter when compared with that of immovables. It is contended that this evasion of taxes should be made up in the inheritance tax by imposing a heavier rate on the movables inherited. It is true that evasion of taxes in the case of movables is easier than in the case of immovables. If an undifferentiated rate is imposed alike on movables and immovables, therefore, there arises a double injustice because of convertibility of the article concerned and evasion of the tax imposed. I am of the opinion, however, that it is not right that the question of tax evasion should constitute a reason for a differentiated rate in favour of immovables, for such a system presupposes a legal recognition of evasion in the taxation of movables.

Such a heavier rate may be justified if the evasion were made in the inheritance tax. But if it is intended to compensate for the loss resulting from the evasion in other taxes, the whole system would be unjust inasmuch as a person would be punished for something that others have done. Even supposing the evasion were made by a testator, it would be difficult to fix an additional rate which should exactly correspond to the loss resulting from the evasion. Moreover, it may be said that if a certain object is subject to evasion in other taxes, it would be equally so in the inheritance tax, and that consequently an attempt to compensate for the loss resulting from the evasion in one tax would only give rise to further complications in others. For these reasons the point under consideration can never be offered as a formal reason for a lower rate for immovables; it may be useful only as a reference purpose in the inheritance tax.

Secondly, it is asserted that in general immovables have a less producing power than movables; and for this reason if the assessment of the inheritance tax is based upon the prevailing value of objects taxed, the rate for immovables would be unjustifiably heavy. Because of this, immovables

should be taxed more lightly than movables. It must be noted, however, that the less ability to make yields on the part of immovables as compared with movables, is made up by other considerations such as intangible profits, prospective profits through the increment of value and the security of the objects. In consequence, no differentiated tax rate in favour of immovables would be justified.

Thirdly, it is also asserted that, since land is taxed heavily in other taxes, a sort of balance should be created between immovables and movables by taxing the former lightly in the inheritance tax. However, this involves a serious difficulty, even supposing such a balance to be desirable. There is no guarantee that the abatement in the inheritance tax would be equal to the over-tax burden in other taxes.

(vi) The tax object of the estate duty is divided into two parts; that which has been inherited from predecessors by a testator, and that which has been created by the latter in his life time, and a heavier rate of tax is imposed on the former. This system is a revised form of the original scheme of Rignano, and may be mainly explained from the standpoint of economic interest. It will encourage testators to be industrious and thrifty during their life time, because they will anticipate its benefits for themselves. Under the operation of the ordinary inheritance tax, the greater the property one has created during one's life time, the higher the tax rate the legatee will be called upon to pay. But under the system in question, his endeavours at creating property will be rewarded, because a comparatively lower tax rate will be applied to the property he himself has created.

Since a higher rate will be applied to the property a testator has inherited from his predecessors, he should endeavour to create as much property as possible through his own efforts, so that he may be able to leave to posterity an amount which he would not be able to leave if the same rate of tax were to be applied alike to all of his property. Thus, the system will encourage people to be industrious

and thrifty, thereby mitigating one of the defects of the ordinary inheritance tax, namely, discouragement for industry and thrift.

This system of differentiation in tax rates can be explained from the standpoint of the faculty theory as well as from that of economic interest. At first blush, such a system may seem quite meaningless from the standpoint of the faculty theory. It may be said that, from the viewpoint of an heir, it does not make any difference to his ability to pay, whatever the nature of the property he has inherited, i.e., whether the property has been given him by his immediate predecessor or by distant predecessors. But a difficulty is seen in connection with the estate duty. In formal appearance, the heir pays this tax on his own behalf but in reality he pays it on behalf of the testator. Such is the intention of the estate duty. The aim of the estate duty is to reach the tax-object which other taxes were unable to reach during the testator's life time through his evasion. The time of inheritance is merely seized for making up his negligence to bear the tax burden.

The testator will ordinarily show more attachment to the property he has earned through his own labour (although he can only earn it with the cooperation of society) than that which he has inherited from his predecessor, and consequently he would feel a greater pain to pay a tax out of the former property than out of the latter one. For this reason, a lower tax rate should be applied to the former property. Thus it is possible to explain or justify the system from the standpoint of the faculty theory.

The system, however, is accompanied by a number of difficulties. The first objection is raised from the standpoint of social policy. The system may contribute towards the furtherance of the production policy of a nation, but it will result in the concentration of wealth in comparatively few hands which will be a serious problem for the welfare of the nation as a whole. On the other hand, it may be asserted that, inasmuch as a heavier tax rate is to be applied to the

property inherited from distant predecessors and since there is a succession tax on the inherited property, big property owners will be taxed heavily enough to prevent such anti-social concentration of wealth. The increase of wealth in such a degree should be welcomed by society as a whole.

The second objection comes from the standpoint of the family system. If the system under consideration is adopted, old historic families will suffer much more greatly than the nouveaux riches. This will be especially so when such old families are succeeded successively by incapable family leaders and in some cases so great will be their tax burden that some of the families would be financially ruined. Such a system would be in consequence disastrous to the time-honoured family system itself. It goes without saying that old distinguished families should be preserved as much as possible and their rapid decline should be forestalled by all means. But when a family is succeeded successively by incapable persons, no protection should be extended to such a family. Replacement of incapable persons by capable ones is inevitable as well as just; the change itself would enliven social activities and stimulate social progress. The economic disadvantage on the part of old families from the system should be not only justified but even welcomed. Moreover, old families with incapable family heads will decline only financially as the result of the tax system in question; in other respects such families may continue to exist as formerly.

Nor will the system destroy the family system in general, inasmuch as the decline of some families would mean the rise of other families. It is possible that those who criticise the tax system from the standpoint of the family do so not because of their anxiety to preserve the family system in general, but because they want to preserve some specific families which have fallen from their place in history. Such a view will not be tenable in the present generation of democratic thinking. However, if the objection is to be respected, the difficulty involved may be removed by adopting

Dewitz's Erbzuwachssteuer, which, however, would be objectionable from the standpoint of economic interest.

The third objection is over the difficulty of taxation technique, or to be more specific, the difficulty of fixing the tax base for the two parts of inherited property. Variation in price also gives rise to serious problems. The property inherited from distant predecessors is not taken in terms of different tax-objects, but the whole amount is estimated in monetary value. When, therefore, the value of the property inherited has greatly increased by the time of inheritance, the increased monetary value will be taken as an increase in the amount of the property, even when there has been made no actual increase in it. Whether this point should be taken into consideration constitutes a serious issue.

Strictly speaking, the index numbers of prices should be referred to in considering the point in question. However, the basis of monetary value may be sufficient for the general purpose. A precedent of such a treatment is found in the case of the increment in land value.

(2) Means of Adopting New Specific Progressions.

The following are the possible means for carrying out new specific progressions.

(A) It is desirable to estimate strictly the business ability of legatees although such estimation involves much difficulty in taxation technique. First, a normal tariff should be adopted for normal persons thereby creating an abatement in favour of minors, aged persons, deformed and disabled persons. Such an abatement should not go to extremes, because of the ever-present possibility of abuse. Some minors may have greater business ability than some adult persons, so that any great discrimination on account of age should be regarded as a source of injustice. Difference in the business ability of persons also constitutes another serious issue. This may be dealt with when the income of the inheritor is under consideration.

(B) In the case of the independent property or income of heirs, a normal tariff should first be adopted taking as

basis a person having no such property, provided there exists a property tax. Then an additional tax should be decided upon in accordance with the amount of such property. It cannot be adopted in a country like Japan having no property tax, in which case the income tax may be substituted. First, a normal tariff should be decided upon taking as basis persons having no independent income of their own, and then an additional tax should be imposed the rate of which should vary with the amount of their respective independent incomes. Such an additional tax should be decided after taking into consideration the amount of incomes; part of the tax should also reflect the business ability of taxpayers, as has already been pointed out on a previous occasion.

(C) Thirdly, when an heir is a member of the predecessor's family and the latter had been deriving a personal earned income, the most that can be adopted is something as follows: first, a normal tariff is decided upon taking as basis persons having no such earnings, and then to fix the tax rate of those having such earnings at a point one grade below the normal tariff. Strictly speaking, the amount of such incomes and their ratios to the property inherited should be also taken into consideration, but this would involve a difficulty too complicated to overcome.

(D) As to the fourth question, namely, whether or not an heir has contributed towards the economy of a testator, it is desirable that the degree as well as period of such economic contribution should be considered. This, however, would prove too troublesome. The only practical method is to lower the tax rate by one grade whenever there is a sufficient evidence for such economic contribution on the part of an heir.

(E) As to a difference in the taxation of movables and immovables, the simplest method is to adopt an abatement of say ten per cent of the assessed value of immovables. Another method is to impose an additional tax for the movables in a given property.

(F) Rignano has already advanced a plan of progression

in time. Supposing the original tax B pays for succeeding to the property which A has created during his life time to be one-third of the amount, C will have to pay a tax equal to two-thirds of the property A has left and one-third of the property B has left, upon B's death. When C dies, the inheritance tax D will have to pay will be as follows on: the entire property A has left, two-thirds of the property created by B, one-third of the property created by C. I would rather substitute for Rignano's scheme a simpler method of differentiation between the property handed down from distant predecessors and that which was bequeathed by one's immediate predecessor, and of imposing a heavier tax upon the former.

CONCLUSION

Generally speaking, progressive taxation is regarded as more suitable than proportional taxation because it is more conformative to ability to pay. However, in some cases progression is either impracticable or difficult of actual application. However, it is an universal demand in taxation that progression should be applied wherever it may be applied. The inheritance tax is one in which progression can be applied as it is suited to its nature. Besides the usual progression according to the amount of property, there is another progression based upon the degree of relationship. In Japan, there are in addition to the above two, those based upon the nature of the inheritance and, the household membership. But I would consider the following six points in deciding on progression: (1). Whether or not an inheritor has any business ability and if he has the degree of such ability, (2), whether or not an inheritor has an independent income or property and if he has, its amount, (3), in case an heir is a member of a testator's household, whether or not the testator had a personal income, and if he had, its size, (4), in the same case, whether or not an heir had participated in the business of the testator, and if he has the extent of

his participation, (5) the kinds of property inherited, especially differentiating between movables and immovables, (6) differentiation between the property received by the testator from his predecessor and the property earned by him during his lifetime in the case of the estate duty. All of the foregoing points are important in the adoption of a specific progression.

But in carrying out the scheme involving these points, the following means only are practicable: general reduction of rates, a specific abatement in the estimation of the tax basis, simple additional taxes, simple differentiation in tax rates. There are other means which appear desirable but which are impracticable because of difficulty in taxation technique. A progressive additional tax may be adopted in connection with an heir's income or property even when considered from the standpoint of taxation technique. An extensive application of such a progression in actual legislation is highly desirable.

(Additional note). There are two other points to be taken into consideration in connection with a progression in the inheritance tax. They are: the possible length of the life of an heir, and the length between two successive times of inheritance. I did not include them in my main article because they are not in any way related to the faculty principle, but are only intended to forestall the danger of consuming the main body of the property taxed. In a wider sense, they may be properly included in such an article as this. But I have included in this paper only those points which are instances of the application of the faculty principle.

MASAO KAMBE